
A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS

Divorce and Your Deferred Compensation Account

New Jersey State Employees Deferred Compensation Plan

What happens to my account in the case of a divorce?

ENCUMBRANCES ON YOUR DEFERRED COMPENSATION ACCOUNT

The New Jersey State Employees Deferred Compensation Plan is an eligible state and local government deferred compensation plan defined under Internal Revenue Code Section 457(b). As such, it is not regulated by federal ERISA legislation that authorizes the payment of retirement benefits in accordance with the requirements of qualified domestic relations orders (QDRO). These are orders issued by a court, generally in connection with the granting of a dissolution of a marriage.

The Division of Pensions and Benefits recognizes that these assets may constitute a significant part of marital assets. Court decisions and opinions rendered by the Attorney General have resulted in the pension systems implementing domestic relations orders. Therefore, although your deferred compensation plan account is normally exempt from any liens, **the Division will honor acceptable qualified domestic relations orders** and make every effort to implement them.

DISTRIBUTION EFFECTIVE ONLY UPON SEPARATION FROM EMPLOYMENT

A separate account will be established for a divorced spouse, or alternate payee, as soon after the order is received as is administratively possible. Assets will be transferred from the member's account to the alternate payee's account at that time. The alternate payee has the right to direct investment of those assets once they are segregated from the member's account. However, distribution may not commence to the alternate payee until the member retires or otherwise separates from employment.

To be implemented by the Division of Pensions and

Benefits, the matrimonial order must designate the amount to be set aside for the alternate payee at the time assets are segregated. This amount may be designated as a specific dollar amount or a specific percentage of the member's account, but not as a monthly payment. Once the member retires or otherwise separates from employment, the alternate payee may elect to receive that amount in a lump-sum or as a monthly allowance. The amount set aside for the alternate payee is sent directly to the alternate payee unless the order specifies another payee, such as a probation department.

Before a matrimonial order is issued, the text of the order should be sent to the Division of Pensions and Benefits for review and comment.

INCOME TAX REPORTING

As with qualified retirement plans, recently enacted federal tax law (effective January 1, 2002) permits the assignment of income to an alternate payee receiving benefits pursuant to a domestic relations order from an IRC Section 457(b) deferred compensation plan. Therefore, any distributions to an alternate payee are reported as income to that alternate payee for the year that the distribution is made. Also, any income tax withheld from the distribution to the alternate payee is reported as withholding for the benefit of the alternate payee and is used to offset any tax liability due by the alternate payee. The alternate payee is given the opportunity to submit a *Withholding Allowance Certificate - Form W-4P*, for the purpose of calculating federal income tax withholding from the benefit payment. Benefit and income tax withholding amounts are reported to both the member and the alternate payee on *Form 1099R*.

BENEFITS PAID TO BENEFICIARIES AFTER MEMBER'S DATE OF DEATH

Upon the death of the member, any assets

remaining in the alternate payee's account remain in the alternate payee's control but take the characteristics of a payment to a beneficiary.

Any distributions to an alternate payee, or an alternate payee's beneficiary, after the member's date of death are reported as income of that surviving alternate payee or beneficiary. The beneficiary or surviving alternate payee is given the opportunity to submit a *Withholding Allowance Certificate - Form W-4P*, to have federal income tax withheld. Benefit and income tax withholding amounts are reported to the beneficiary or surviving alternate payee on *Form 1099-R*.

BENEFICIARY DESIGNATION

The Division of Pensions and Benefits cannot implement any "irrevocable designation of death benefits or selection of retirement option." Such designation or selection remains the prerogative of the member.

A member involved in a divorce proceeding should review his or her beneficiary designation at the time divorce papers are filed and again after the final decree has been issued. Unless the member changes beneficiary designations, the member's last beneficiary designation would be the one honored. If you are unsure of your beneficiary designation, contact the Division of Pensions and Benefits, NJ State Employees Deferred Compensation Plan at (609) 292-3605 to have a new beneficiary designation form sent to you. The Division of Pensions and Benefits cannot release the identity of a member's beneficiary without the member's written approval.

The alternate payee may make beneficiary designations for the segregated assets. However, payments to those beneficiaries only commence following the alternate payee's date of death **and** the member's separation from service with the employer.

This fact sheet has been produced and distributed by:

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This fact sheet is a summary and not intended to provide total information.

Although every attempt at accuracy is made, it cannot be guaranteed.
